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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,469	02/27/2004	Uwe Nigrin	078857.0128	8433
31625 7590 03/02/2009 BAKER BOTTS L.L.P. PATENT DEPARTMENT 98 SAN JACINTO BLVD., SUITE 1500 AUSTIN, TX 78701-4039				
EXAMINER				
TRIEU, THERESA				
ART UNIT		PAPER NUMBER		
3748				
MAIL DATE		DELIVERY MODE		
03/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: UWE NIGRIN

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Application 10/789,469  
Technology Center 3700

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Mailed: March 2, 2009

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*Before*: HARRY HORTON, *Discipline Team Paralegal*.  
HORTON, *Discipline Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 16, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, MISSING CERTIFIED TRANSLATION

The Examiner relied on the foreign reference Grossner (DE 10 2005 007 602 A1, issued Aug. 24, 2006) in rejecting the claims. A full certified English translation of the above noted foreign reference is not of record in the Image File Wrapper (IFW).

When an Examiner relies on a document “in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added). MPEP § 1207.02. Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to obtain a full certified English language translation of the above noted foreign reference;
  - 2) to complete the IFW by having the translation obtained scanned into the IFW file;
  - 3) to provide a copy of the translation obtained to Appellant;
- and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

hh

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